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IN THE

Supreme Court of the United States

OCTOBER TERM, 1945

No. 537

WAYNE THOMAS LONERGAN,
Petitioner,

against

PEOPLE OF THE STATE OF NEW YORK,
Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE STATE OF NEW YORK AND BRIEF IN SUPPORT THEREOF

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INDEX

	PAGE
Petition for Writ of Certiorari	1
Jurisdiction of This Court	1
Opinions Below	2
Statutes Involved	2
Summary Statement of Matter Involved	3
(a) Introductory Statement	3
(b) Nature of the Case	4
(c) The Circumstances Under Which Petitioner's Confession Was Obtained	6
Question Involved	9
Reasons for the Allowance of the Writ	9
Brief in Support of Petition	11
Statement	11
Argument	11
The use of petitioner's alleged voluntary confession to obtain his conviction constitutes a violation of his rights and a denial of due process under the Fourteenth Amendment to the Constitution of the United States	11
Conclusion	16

Table of Cases Cited

PAGE

Ashcraft v. Tennessee, 322 U. S. 143, 88 L. ed. 1192.. 10, 15, 16
Brown v. Mississippi, 297 U. S. 278, 80 L. ed. 682..... 9
Chambers v. Florida, 309 U. S. 227, 84 L. ed. 716.....9, 15
Hooker v. Los Angeles, 188 U. S. 314..... 15
Hurtado v. California, 110 U. S. 516, L. ed. 232..... 15
Lisenba v. California, 314 U. S. 219, 86 L. ed. 166.....9, 15
Lyons v. Oklahoma, 322 U. S. 596, 88 L. ed. 1481.....10, 15
Malinski v. New York, ... U. S. ....; #367, Oct. 1944 Term, decided March 26, 1945; 89 L. ed. Adv. Op. 738 .....10, 15
McNabb v. United States, 318 U. S. 332, 63 S. Ct. 608 87 L. ed. 819.....9, 13, 14
Palko v. Connecticut, 302 U. S. 319, 82 L. ed. 288.... 15
People v. Alex, 265 N. Y. 192..... 13
People v. Barbato, 254 N. Y. 170..... 13
People v. Doran, 246 N. Y. 409..... 13
People v. Elmore, 277 N. Y. 397..... 13
People v. Kelly, 264 App. Div. 14..... 13
People v. Kennedy, 159 N. Y. 346.....12, 13
People v. Malinski, 292 N. Y. 360..... 13
People v. Mummiani, 258 N. Y. 394.....12, 13
People v. Pantano, 239 N. Y. 416..... 12
People v. Pignataro, 263 N. Y. 229.....12, 13
People v. Trybus, 219 N. Y. 18..... 13
People v. Weiner, 248 N. Y. 118..... 13
Twining v. U. S., 211 U. S. 78, 53 L. ed. 97..... 14
U. S. v. Mitchell, 322 U. S. 65..... 14
Ward v. Texas, 316 U. S. 547, 86 L. ed. 1663..... 9

Other Authorities Cited

PAGE

Code of Criminal Procedure of the State of New York,
Section 165 . . . . . 3, 12
Section 395 . . . . . 3, 12

Constitution of the United States, Fourteenth Amendment 2, 9, 11, 16

Judicial Code as amended by the Act of February 13, 1925, c. 229, § 1 (43 Stat. 937) Section 237(b) 2

Penal Law of the State of New York,
Section 1844 . . . . . 3, 12

28 U. S. C. A. § 344(b) 2

28 U. S. C. A. § 350 2

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No. .....

WAYNE THOMAS LONERGAN,

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against

PEOPLE OF THE STATE OF NEW YORK,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE STATE OF NEW YORK

To the Honorable, the Chief Justice and Associate Justices of the Supreme Court of the United States:

The petitioner, WAYNE THOMAS LONERGAN, respectfully prays that a Writ of Certiorari issue to review the judgment of the Court of Appeals of the State of New York, affirming a judgment of the Appellate Division of the Supreme Court of the State of New York, First Judicial Department, entered February 23rd, 1945, which affirmed a judgment of the Court of General Sessions, New York County, entered upon a verdict convicting petitioner of the crime of murder in the second degree.

Jurisdiction of This Court

The judgment of affirmance of the Court of Appeals of the State of New York was rendered July 19th, 1945 (R.) and the remittitur to the Court of General Sessions, New York County, was amended by order dated

October 8, 1945 (R.). This petition is filed within three months from July 19, 1945, the date of affirmance, as required by law (28 U. S. C. A. § 350). The jurisdiction of this Court is conferred by Section 237(b) of the Judicial Code as amended by the Act of February 13, 1925, c. 229, § 1 (43 Stat. 937); 28 U. S. C. A. § 344(b).

The judgment of the Court of Appeals affirmed a judgment convicting the petitioner of the crime of murder in the second degree and sentencing him to State's Prison for a term of not less than thirty-five years nor more than the term of his natural life. The petitioner specially set up and claimed on appeal to the Appellate Division of the Supreme Court of the State of New York, and later in the Court of Appeals, that under the Fourteenth Article of Amendment to the Constitution of the United States, his right, privilege and immunity against being deprived by the State of New York of his life and liberty without due process of law was violated, and, as certified by the Court of Appeals, that point was considered and necessarily decided by that Court (Order Amending Remittitur, October 8, 1945, R.).

Opinions Below

There were no opinions written in the Courts below and the case is reported: *People of the State of New York* v. *Wayne T. Lonergan*, 269 App. Div. 662, affd. 294 N. Y. 942.

Statutes Involved

The Constitution of the United States, Amendment XIV, Section 1, in so far as material, provides:

> "* * * No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

Section 395 of the Code of Criminal Procedure of the State of New York provides as follows:

> "§ 395. Confession of defendant, when evidence, and its effect.
>
> "A confession of a defendant, whether in the course of judicial proceedings or to a private person, can be given in evidence against him, unless made under the influence of fear produced by threats, or unless made upon a stipulation of the district attorney, that he shall not be prosecuted therefor; but is not sufficient to warrant his conviction, without additional proof that the crime charged has been committed."

Section 165 of the Code of Criminal Procedure of the State of New York provides:

> "§ 165. Defendant, upon arrest, to be taken before magistrate.
>
> "The defendant must in all cases be taken before the magistrate without unnecessary delay, and he may give bail at any hour of the day or night."

Section 1844 of the Penal Law of the State of New York provides as follows:

> "§ 1844. Delaying to take person arrested for crime before a magistrate.
>
> "A public officer or other person having arrested any person upon a criminal charge, who wilfully and wrongfully delays to take such person before a magistrate having jurisdiction to take his examination, is guilty of a misdemeanor."

Summary Statement of Matter Involved

(a) Introductory Statement

The petitioner, WAYNE THOMAS LONERGAN, was convicted of the crime of murder in the second degree in the Court of General Sessions of the County of New York,

State of New York, on April 17th, 1944 and sentenced to State's Prison for a term of not less than thirty-five years nor more than the term of his natural life (R. 934-5).

On appeal to the Appellate Division of the Supreme Court of the State of New York, said judgment of conviction was unanimously affirmed without opinion (R. 969-70). Permission to appeal from said judgment of affirmance to the Court of Appeals was granted by an Associate Judge of that court on his certification that questions of law were involved which ought to be reviewed by the Court of Appeals (R. 971). After argument in the Court of Appeals the judgment of conviction was affirmed without opinion and the remittitur of that Court, as amended, recites that:

> "Upon this appeal there was presented and necessarily passed upon a question under the Constitution of the United States, viz.: The defendant argued that the admission of the alleged confession in evidence constituted a denial of due process and a violation of his rights under the Fourteenth Amendment to the Constitution of the United States. This Court held that the admission of the alleged confession in evidence was not a denial of due process or a violation of defendant's rights under the Fourteenth Amendment to the Constitution of the United States."

(b) Nature of the Case

The body of Patricia Lonergan, the petitioner's wife, was discovered in the bedroom of her apartment located in New York City, on the evening of October 23, 1943, under circumstances indicating that she was the victim of a brutal murder (R. 51-61, 128-9, 143-4, 185-6). There were no eyewitnesses to the tragedy and the testimony of the Medical Examiner presents the only evidence as to the time and manner in which the deceased met her death. He testified that in his opinion, "* * * the cause of death was asphyxia by strangulation, laceration of the scalp, frac-

ture of the skull, with contusion or bruising of the brain" (R. 80), and that the head wounds could have been caused by a blow from a blunt instrument of the same nature as a pair of broken candlestick holders which were found at the scene of the crime (R. 70). He estimated that death occurred from about eight to sixteen hours prior to the time he first saw the body, thereby fixing the time of death between 6 A. M. and 2 P. M. Sunday, October 24th, 1943 (R. 50-2). Petitioner did not take the witness stand and the only evidence directly connecting him with the commission of this crime is an alleged confession which, he claims, is involuntary and not the product of his free will. The prosecution and conviction of the petitioner is based solely on this confession, as fully appears from the Court's charge to the jury, that:

> "* * * Inasmuch as the People's case depends upon this confession, if you decide that you will not accept the confession as a voluntary statement, you must acquit the defendant" (R. 896).

When the petitioner's alleged voluntary confession was offered in evidence at the trial by the prosecution, the defense objected and was permitted to conduct a preliminary examination in the presence of the jury on the question of whether the confession was voluntarily and freely made (R. 295). The Court and jury heard the testimony of about twelve witnesses who took part in the arrest, detention and questioning of the petitioner. The objection to the admission of the confession on the ground of coercion and duress was overruled by the Trial Court and the matter was submitted to the jury under the charge that, "The question for the jury to decide is whether or not the confession was a voluntary one" (R. 893). The Trial Judge further instructed the jury that: "If you believe that this defendant was intimidated or subjected to duress and that the statement he made is not a voluntary statement, but an involuntary statement produced by the treatment he received, or

says he received, or that the defense says he received, and if you believe that he made that statement or confession as a result of duress, it would be your duty to disregard the statement and give it no weight or consideration whatever" (R. 895-6).

The Trial Judge did not instruct the jury in his main charge that unnecessary delay in arraignment constituted a crime under the Penal Law of the State of New York, and that those responsible therefor were guilty of oppression. After the attention of the Court was directed to this omission by defense counsel (Requests Nos. 13 and 14, R. 930), the Trial Judge charged as follows (R. 903-4):

> "As a legal proposition, it is generally true, as they say in request 13, that the police are guilty of oppression and neglect of duty when they wilfully detain a prisoner without arraigning him before a Magistrate within a reasonable time.
>
> "*We are not concerned with that particular violation of the law except as you are concerned with it, if you are, in considering the question as to whether or not this was a voluntary confession.* I have already read to you that section or called your attention to the fact that under our law, section of the Penal Code, it is the duty of the police to arraign promptly without unnecessary delay a person that is arrested.
>
> "I decline to charge any further on that subject." (Italics writer's.)

The Trial Judge also declined to charge that the use of a coerced confession to obtain a conviction constituted a denial of due process of law (R. 905, 932).

(c) The Circumstances Under Which Petitioner's Confession Was Obtained

The petitioner was arrested in Toronto, Canada, at 8 A. M. October 25th, 1943 and taken to Toronto Police Headquarters (R. 427-8, 431). At 12:15 P. M. he was photo-

graphed by the Criminal Identification Bureau (R. 207-8) and at 10 o'clock that same evening he was questioned extensively by members of the Toronto and New York police and an assistant district attorney from the office of the District Attorney of New York County (R. 230-3, 240, 353-4). When first observed by the New York District Attorney, the petitioner, "was lying on three chairs placed together with the backs adjacent to each other so as to form a sort of a bench" (R. 350). This questioning continued for about two hours until midnight (R. 354), after which petitioner was detained overnight (R. 427).

On Tuesday, October 26th, 1943, the day following his arrest, petitioner signed a prepared statement that was handed to him, stating that he desired of his own free will to return to New York City (R. 361-2). At 8 P. M. that evening, in custody of the New York law enforcement officers, he was taken from Toronto to the Union Railroad Station, Buffalo, New York, stopping en route for examinations before Canadian and United States Immigration Boards of Inquiry at Fort Erie, Canada, and Black Rock, New York (R. 364-5, 459-65, 515-19). The petitioner was then taken to the Statler Hotel, Buffalo, New York, where the detectives obtained a room at about 5:30 A. M. Wednesday morning, October 27th, 1943 (R. 467-8, 520). He reclined in that hotel room, under guard, on an iron cot until about 10 A. M. that morning, being alternately handcuffed to a chair and the iron cot which was provided for him (R. 468-9, 524-5). The party left Buffalo by plane at about 1 o'clock and arrived at LaGuardia Field in New York City at about 4:30 P. M., and petitioner was brought directly to the District Attorney's office of New York County at about 5 o'clock that afternoon (R. 475, 525-6).

Petitioner was taken to a room in the District Attorney's office in which there were present district attorneys and numerous officers and men of the New York Police Department (R. 477, 527, 536). During all this time no

warrant had been issued for the arrest of petitioner nor had he been indicted or arraigned before any judicial officer. He was forced to strip and submit to a medical examination by the Medical Examiner for the District Attorney (R. 300, 477, 527, 537). This examination lasted for about twenty or thirty minutes (R. 478, 527, 537, 382) and as soon as the petitioner was dressed, he was questioned by various police officials and assistant district attorneys for a period estimated as lasting from about one to two hours (R. 309, 381, 479, 529, 537). Later, he was questioned and cross-questioned at various intervals by numerous individuals. Assistant District Attorney Grumet questioned him again on and off from about 9:30 or 10 o'clock that evening until 2 o'clock the next morning (R. 316-18) and for about "half an hour or so" between 2 and 4 A. M. Thursday morning (R. 320). This questioning was always conducted in the presence of others (R. 321). Assistant District Attorney Loehr questioned petitioner at 10 o'clock Thursday morning for about half an hour (R. 386-8); between half to three-quarters of an hour shortly after 11 o'clock (R. 388-9), and for more than an hour after 1 o'clock Thursday afternoon (R. 396). Petitioner was also questioned on many occasions by police officials who came in and out of the room all night (R. 481-3). At about 11 P. M. Wednesday night he was subjected to a police lineup (R. 385).

At times there were as many as eight detectives in the room while petitioner was being questioned, and other people working on the case were constantly walking in and out of the room where the petitioner was being questioned (R. 311-14, 321). He was under constant guard (R. 383) and did not sleep during all the time he was held in the District Attorney's office. When he was not being questioned, he was either standing up and gazing out of the window or sitting on wooden chairs (R. 318, 484, 531). Some time during the detention period, District Attorney Loehr read sections of the Penal Law and Criminal Code

dealing with the crime of homicide to the petitioner and pointed out the various degrees thereof and the punishment for each degree (R. 406-7, 411-12). Petitioner denied his guilt (R. 320), until about 2:45 P. M. Thursday afternoon, October 28th, 1943, seventy-eight hours after his arrest in Toronto, and twenty-two hours after his arrival at the District Attorney's office in New York County. At that time, he yielded to his inquisitors' desires and made a detailed statement by which he inculpated himself as the perpetrator of the crime. Thereafter he was booked, fingerprinted and photographed (R. 497, 534). Arraignment before a Magistrate did not take place until Friday morning, October 29th, 1943 (R. 504, 534).

Question Involved

The question involved is whether the admission in evidence of the petitioner's alleged voluntary confession constituted a denial of due process and a violation of his rights under the Fourteenth Amendment to the Constitution of the United States.

Reasons for the Allowance of the Writ

The Court of Appeals of the State of New York has decided a federal question of substance in a way probably not in accord with the applicable decisions of this Court, in that the said Court of Appeals has affirmed a judgment and sentence of from thirty-five years to life, which, when tested by an appraisal of the totality of the facts in the case, discloses that petitioner was deprived of his liberty without due process of law. See: *Brown* v. *Mississippi*, 297 U. S. 278, 80 L. ed. 682; *Chambers* v. *Florida*, 309 U. S. 227, 84 L. ed. 716; *Lisenba* v. *California*, 314 U. S. 219, 86 L. ed. 166; *Ward* v. *Texas*, 316 U. S. 547, 86 L. ed. 1663; *McNabb* v. *United States*, 318 U. S. 332, 87 L. ed. 819;

Ashcraft v. *Tennessee*, 322 U. S. 143, 88 L. ed. 1192; *Lyons* v. *Oklahoma*, 322 U. S. 596, 88 L. ed. 1481; *Malinski* v. *New York*, ... U. S. ....; #367, Oct. 1944 Term, decided March 26, 1945; 89 L. ed. Adv. Op. 738.

WHEREFORE petitioner respectfully prays that a writ of certiorari be issued out of and under the seal of this Honorable Court, directed to the Court of Appeals of the State of New York, demanding that Court to certify and send this Court for its review and examination, on a day certain to be therein named, a full and complete transcript of the record of all proceedings of said Court of Appeals of the State of New York in this case, and that the judgment and order of said Court of Appeals affirming the judgment in this action may be reversed and that petitioner be granted such other and further relief as to this Honorable Court may seem just and proper.

WAYNE THOMAS LONERGAN,
Petitioner.

EDWARD V. BRODERICK,
Attorney for Petitioner.

State of New York,
County of New York, } ss.:

I hereby certify that I have examined the foregoing petition for a writ of certiorari and that in my opinion it is well founded and the cause is one upon which the petition should be granted.

EDWARD V. BRODERICK,
Counsel for Petitioner.